

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

LARRY WHITE EAGLE,

Petitioner,

v.

**Case No. 06-C-687
06-C-688**

JUDY P. SMITH,

Respondent.

DECISION AND ORDER

Larry White Eagle (“White Eagle”), who is currently incarcerated in the Oshkosh Correctional Institute, filed a state petition for a writ of habeas corpus alleging that his conviction violated federal law. On June 13, 2006, White Eagle filed a Notice of Removal, which removed his state habeas petition to this Court. He also filed a petition to proceed *in forma pauperis* (“IFP”).

Also, on June 13, 2006, White Eagle filed a separate action, in which he alleged that the State of Wisconsin deliberately tried to prevent him from removing his state habeas action to federal court. He filed a petition to proceed IFP in that matter as well.

On July 5, 2006, the Court consolidated both actions, and denied both of his petitions for IFP because both of his claims were without merit. The basis of the Court’s decision was

twofold. First, under the removal statute, only a defendant may remove an action to federal court. *See* 28 U.S.C. § 1441(a). Second, White Eagle had not yet exhausted his state court remedies for this Court to recognize his action as a federal habeas petition.

On July 19, 2006, White Eagle filed a motion for reconsideration. He argues that the Court erred in denying his IFP petitions, but he fails to raise any new argument that would persuade the Court otherwise. However, White Eagle also wrote the Court a letter, in which he asks the Court to issue an order of remand. The Court construes his letter as a motion to remand. The Court will grant that motion, because this Court does not currently have jurisdiction over his state habeas petition.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

White Eagle's Motion for Reconsideration (Docket No. 5) is **DENIED**.

White Eagle's Motion for Remand (Docket No. 8) is **GRANTED**.

Dated at Milwaukee, Wisconsin this 18th day of January, 2007.

BY THE COURT

s/ Rudolph T. Randa

**Hon. Rudolph T. Randa
Chief Judge**